

ENTERED

April 06, 2020

David J. Bradley, Clerk

Barbara Lott, *et al.*,

Plaintiffs,

*versus*GCE Freight, Inc., *et al.*,

Defendants.

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Civil Action H-19-4984

Opinion on Partial Dismissal

1. *The Accident.*

On October 31, 2019, Harmony Gamez and Destiney Lee were killed when a truck side-swiped Gamez's car. She had parked on the shoulder of I-10 with a flat tire. The two other passengers in the car – Christina Lott and Madison Almaraz – were injured.

2. *The Actions.*

In the initial conference, the court learned that Gamez's parents had filed the first suit for wrongful death arising from this accident.

A second suit was filed by the surviving passengers – Lott and Almaraz – and Lee's beneficiaries – her parents and the representative of her estate. The Gamez plaintiffs non-suited their case when the second case was filed and intervened in it.

Among others, the plaintiffs in the second suit sued Gamez, a resident of Texas, for failing to maintain her vehicle. Elmhurst Express 1, Inc., removed the case because Gamez is fraudulently joined to defeat diversity.

3. *Joinder.*

In this case, Gamez and her estate are both (a) intervening as a plaintiff to recover for her suffering and death and (b) a defendant accused of negligently maintaining her car, causing the accident.

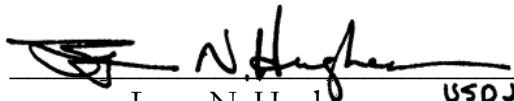
The plaintiffs cannot argue that because her tire went flat, Gamez caused the accident. First, they do not have an iota of evidence that Gamez did not properly maintain her car. A flat tire is not a symptom of poor maintenance.

Second, the maintenance of her car is irrelevant because once the tire went flat, she legally parked on the shoulder with her lights flashing. It is inconceivable that her having a flat tire caused a truck to veer two lanes onto the shoulder, sideswiping her car and killing two people – Gamez is clearly not at fault.

Under a reasonable estimate, Gamez was not wealthy beyond her insurance; it was at least the Texas minimum of \$115,000. She is not a target defendant financially, even if she added modestly to the pool available for recovery. That Gamez's parents, suing on her behalf, do not oppose her being accused of causing her death shows that her involvement as a defendant is an unscrupulous manipulation.

Suing Gamez for causing this accident is a naked attempt to defeat diversity and further manipulate this proceeding in addition to their duplicate-case antics in state court. Because the plaintiffs have not pleaded a fact that support an action against Gamez, the court holds that she has been improperly joined to defeat diversity. The claims against Harmony Gamez will be dismissed.

Signed on April 6, 2020, at Houston, Texas.


Lynn N. Hughes USOJ
United States District Judge